WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES [5000 - 5987] *(Division 5 repealed and added by Stats. 1967, Ch. 1667.)*

PART 1. THE LANTERMAN-PETRIS-SHORT ACT [5000 - 5550] *(Heading of Part 1 amended by Stats. 1968, Ch. 1374.)*

CHAPTER 2. Involuntary Treatment [5150 - 5349.1] *(Chapter 2 added by Stats. 1967, Ch. 1667.)*

ARTICLE 7. Legal and Civil Rights of Persons Involuntarily Detained [5325 - 5337] *(Article 7 added by Stats. 1967, Ch. 1667.)*

5325. Each person involuntarily detained for evaluation or treatment under provisions of this part, and each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing those services, and otherwise brought to his or her attention by any additional means as the Director of Health Care Services may designate by regulation. Each person committed to a state hospital shall also have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing those services and otherwise brought to his or her attention by any additional means as the Director of State Hospitals may designate by regulation:

(a) To wear his or her own clothes; to keep and use his or her own personal possessions including his or her toilet articles; and to keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases.

(b) To have access to individual storage space for his or her private use.

(c) To see visitors each day.

(d) To have reasonable access to telephones, both to make and receive confidential calls or to have such calls made for them.

(e) To have ready access to letterwriting materials, including stamps, and to mail and receive unopened correspondence.

(f) To refuse convulsive treatment including, but not limited to, any electroconvulsive treatment, any treatment of the mental condition which depends on the induction of a convulsion by any means, and insulin coma treatment.

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery, and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

(1) Modification or control of thoughts, feelings, actions, or behavior rather than the treatment of a known and diagnosed physical disease of the brain.

(2) Modification of normal brain function or normal brain tissue in order to control thoughts, feelings, actions, or behavior.

(3) Treatment of abnormal brain function or abnormal brain tissue in order to modify thoughts, feelings, actions or behavior when the abnormality is not an established cause for those thoughts, feelings, actions, or behavior.

Psychosurgery does not include prefrontal sonic treatment wherein there is no destruction of brain tissue. The Director of Health Care Services and the Director of State Hospitals shall promulgate appropriate regulations to assure adequate protection of patients' rights in such treatment.

(h) To see and receive the services of a patient advocate who has no direct or indirect clinical or administrative responsibility for the person receiving mental health services.

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the State Department of Health Care Services and the State Department of State Hospitals to be frequently misunderstood, ignored, or denied.

Upon admission to a facility each patient, involuntarily detained for evaluation or treatment under provisions of this part, or as a voluntary patient for psychiatric evaluation or treatment to a health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, shall immediately be given a copy of a State Department of Health Care Services prepared patients' rights handbook. Each person committed to a state hospital, upon admission, shall immediately be given a copy of a State Department of State Hospitals prepared patients' rights handbook.

The State Department of Health Care Services and the State Department of State Hospitals shall prepare and provide the forms specified in this section. The State Department of Health Care Services shall prepare and provide the forms specified in Section 5157.

The rights specified in this section may not be waived by the person's parent, guardian, or conservator.

(Amended by Stats. 2012, Ch. 34, Sec. 85. (SB 1009) Effective June 27, 2012.)

5325.1. Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the legislature that persons with mental illness shall have rights including, but not limited to, the following:

(a) A right to treatment services which promote the potential of the person to function independently. Treatment should be provided in ways that are least restrictive of the personal liberty of the individual.

(b) A right to dignity, privacy, and humane care.

(c) A right to be free from harm, including unnecessary or excessive physical restraint, isolation, medication, abuse, or neglect. Medication shall not be used as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with the treatment program.

(d) A right to prompt medical care and treatment.

(e) A right to religious freedom and practice.

(f) A right to participate in appropriate programs of publicly supported education.

(g) A right to social interaction and participation in community activities.

(h) A right to physical exercise and recreational opportunities.

(i) A right to be free from hazardous procedures.

(Added by Stats. 1978, Ch. 1320.)

5325.2. Any person who is subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70 shall have the right to refuse treatment with antipsychotic medication subject to provisions set forth in this chapter.

(Amended by Stats. 2024, Ch. 643, Sec. 1. (SB 1184) Effective January 1, 2025.)

5325.3. (a) For purposes of administering antipsychotic medications to a person admitted as a voluntary patient, as described in Section 850 of Title 9 of the California Code of Regulations, or any successor regulation, who consents to receiving those medications, as part of specialty mental health services covered under Medi-Cal or as part of community mental health services, a health facility, or a facility that has a community residential treatment program pursuant to Article 1 (commencing with Section 5670) of Chapter 2.5 of Part 2, shall not be required to obtain the signature of that patient.

(b) For a patient described in subdivision (a), the facility shall maintain a written record containing both of the following:

(1) A notation that the information about informed consent to antipsychotic medications as described in subdivisions (a) to (f), inclusive, of Section 851 of Title 9 of the California Code of Regulations, or any successor regulations, has been discussed with the patient by the prescribing physician.

(2) A notation that the patient understands the nature and effect of the antipsychotic medications and consents to the administration of those medications.

(c) For purposes of this section, "health facility" has the same meaning as set forth in Section 1250 of the Health and Safety Code, except for subdivisions (c), (d), (e), (g), (h), (k), and (m) of that section.

(d) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the State Department of Health Care Services may implement, interpret, or make specific this section, in whole or in part, by means of

information notices or other similar instructions, without taking any further regulatory action. The notice or other similar instruction shall supersede Section 852 of Title 9 of the California Code of Regulations.

(2) The department may amend, adopt, or repeal regulations for purposes of implementing this section in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 2022, Ch. 47, Sec. 58. (SB 184) Effective June 30, 2022.)

5325.4. (a) If a person is involuntarily detained for assessment, evaluation, or treatment under this part, the facility to which the person is brought shall offer and provide a copy of the State Department of Health Care Services' prepared patients' rights handbook to a family member of the detained person under any of the following circumstances:

(1) The person authorizes the disclosure of their detainment information pursuant to Section 5328.1.

(2) The family member is physically present at the facility where the person is involuntarily detained and has knowledge that the individual is involuntarily detained there.

(3) The family member has been notified of the person's presence in the facility pursuant to Section 5328.1.

(4) The person has consented to the family member being provided the handbook.

(b) (1) The handbook may be provided to a family member in a printed or digital copy.

(2) The facility may also provide a referral to the Patients' Rights Advocacy Directory internet website or another local, state, or national organization with related expertise.

(c) If the handbook is provided to a family member pursuant to subdivision (a), then the facility where the person is involuntarily detained for assessment shall also offer and provide a printed or digital copy of the handbook to the person.

(d) For purposes of this section, "family member" means any of the following:

(1) The spouse or domestic partner of the person.

(2) An adult child of the person.

(3) A parent or legal guardian of the person.

(4) A grandparent of the person.

(5) An adult sibling of the person.

(6) An adult grandchild of the person.

(7) An adult relative or close personal friend who has demonstrated special care and concern for the person and is familiar with the person's personal values and beliefs to the extent known.

(e) This section does not authorize the disclosure of patient information that is protected under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), or the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000)).

(Added by Stats. 2024, Ch. 635, Sec. 1. (AB 2154) Effective January 1, 2025.)

5326. The professional person in charge of the facility or state hospital or his or her designee may, for good cause, deny a person any of the rights under Section 5325, except under subdivisions (g) and (h) and the rights under subdivision (f) may be denied only under the conditions specified in Section 5326.7. To ensure that these rights are denied only for good cause, the Director of Health Care Services and Director of State Hospitals shall adopt regulations specifying the conditions under which they may be denied. Denial of a person's rights shall in all cases be entered into the person's treatment record.

(Amended by Stats. 2012, Ch. 34, Sec. 86. (SB 1009) Effective June 27, 2012.)

5326.1. Quarterly, each local mental health director shall furnish to the Director of Health Care Services, the facility reports of the number of persons whose rights were denied and the right or rights which were denied. The content of the reports from facilities shall enable the local mental health director and Director of Health Care Services to identify individual treatment records, if

necessary, for further analysis and investigation. These quarterly reports, except for the identity of the person whose rights are denied, shall be available, upon request, to Members of the State Legislature, or a member of a county board of supervisors.

Notwithstanding any other provision of law, information pertaining to denial of rights contained in the person's treatment record shall be made available, on request, to the person, his or her attorney, his or her conservator or guardian, the local mental health director, or his or her designee, or the Patients' Rights program of the State Department of Health Care Services. The information may include consent forms, required documentation for convulsive treatment, documentation regarding the use of restraints and seclusion, physician's orders, nursing notes, and involuntary detention and conservatorship papers. The information, except for the identity of the person whose rights are denied, shall be made available to the Members of the State Legislature or a member of a county board of supervisors.

(Amended by Stats. 2012, Ch. 34, Sec. 87. (SB 1009) Effective June 27, 2012.)

5326.15. (a) Quarterly, any doctor or facility which administers convulsive treatments or psychosurgery, shall report to the local mental health director, who shall transmit a copy to the Director of Health Care Services, the number of persons who received such treatments wherever administered, in each of the following categories:

(1) Involuntary patients who gave informed consent.

(2) Involuntary patients who were deemed incapable of giving informed consent and received convulsive treatment against their will.

(3) Voluntary patients who gave informed consent.

(4) Voluntary patients deemed incapable of giving consent.

(b) Quarterly, the State Department of State Hospitals shall report to the Director of Health Care Services the number of persons who received such treatments wherever administered, in each of the following categories:

(1) Involuntary patients who gave informed consent.

(2) Involuntary patients who were deemed incapable of giving informed consent and received convulsive treatment against their will.

(3) Voluntary patients who gave informed consent.

(4) Voluntary patients deemed incapable of giving consent.

(c) Quarterly, the Director of Health Care Services shall forward to the Medical Board of California any records or information received from these reports indicating violation of the law, and the regulations which have been adopted thereto.

(Amended by Stats. 2012, Ch. 34, Sec. 88. (SB 1009) Effective June 27, 2012.)

5326.2. To constitute voluntary informed consent, the following information shall be given to the patient in a clear and explicit manner:

(a) The reason for treatment, that is, the nature and seriousness of the patient's illness, disorder, or condition.

(b) The nature of the procedures to be used in the proposed treatment, including its probable frequency and duration.

(c) The probable degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment.

(d) The nature, degree, duration, and the probability of the side effects and significant risks, commonly known by the medical profession, of such treatment, including its adjuvants, especially noting the degree and duration of memory loss (including its irreversibility) and how and to what extent they may be controlled, if at all.

(e) That there exists a division of opinion as to the efficacy of the proposed treatment, why and how it works and its commonly known risks and side effects.

(f) The reasonable alternative treatments, and why the physician is recommending this particular treatment.

(g) That the patient has the right to accept or refuse the proposed treatment, and that if the patient consents, the patient has the right to revoke their consent for any reason, at any time prior to or between treatments.

(Amended by Stats. 2024, Ch. 948, Sec. 14. (AB 2119) Effective January 1, 2025.)

5326.3. The State Department of Health Care Services and State Department of State Hospitals shall promulgate a standard written consent form, setting forth clearly and in detail the matters listed in Section 5326.2, and any further information with respect to each item as deemed generally appropriate to all patients.

The treating physician shall utilize the standard written consent form and in writing supplement it with those details which pertain to the particular patient being treated.

(Amended by Stats. 2012, Ch. 34, Sec. 89. (SB 1009) Effective June 27, 2012.)

5326.4. The treating physician shall then present to the patient the supplemented form specified under Section 5326.3 and orally, clearly, and in detail explain all of the above information to the patient. The treating physician shall then administer the execution by the patient of the total supplemented written consent form, which shall be dated and witnessed.

The fact of the execution of such written consent form and of the oral explanation shall be entered into the patient's treatment record, as shall be a copy of the consent form itself. Should entry of such latter information into the patient's treatment record be deemed by any court an unlawful invasion of privacy, then such consent form shall be maintained in a confidential manner and place.

The consent form shall be available to the person, and to his or her attorney, guardian, and conservator and, if the patient consents, to a responsible relative of the patient's choosing.

(Amended by Stats. 1976, Ch. 1109.)

5326.5. (a) For purposes of this chapter, "written informed consent" means that a person knowingly and intelligently, without duress or coercion, clearly and explicitly manifests consent to the proposed therapy to the treating physician and in writing on the standard consent form prescribed in Section 5326.4.

(b) The physician may urge the proposed treatment as the best one, but may not use, in an effort to gain consent, any reward or threat, express or implied, nor any other form of inducement or coercion, including, but not limited to, placing the patient in a more restricted setting, transfer of the patient to another facility, or loss of the patient's hospital privileges. Nothing in this subdivision shall be construed as in conflict with Section 5326.2. No one shall be denied any benefits for refusing treatment.

(c) A person confined shall be deemed incapable of written informed consent if that person cannot understand, or knowingly and intelligently act upon, the information specified in Section 5326.2.

(d) A person confined shall not be deemed incapable of refusal solely by virtue of being diagnosed as having a mental health disorder.

(e) Written informed consent shall be given only after 24 hours have elapsed from the time the information in Section 5326.2 has been given.

(Amended by Stats. 2014, Ch. 144, Sec. 92. (AB 1847) Effective January 1, 2015.)

5326.55. Persons who serve on review committees shall not otherwise be personally involved in the treatment of the patient whose case they are reviewing.

(Added by Stats. 1976, Ch. 1109.)

5326.6. Psychosurgery, wherever administered, may be performed only if:

(a) The patient gives written informed consent to the psychosurgery.

(b) A responsible relative of the person's choosing and with the person's consent, and the guardian or conservator if there is one, has read the standard consent form as defined in Section 5326.4 and has been given by the treating physician the information required in Section 5326.2. Should the person desire not to inform a relative or should such chosen relative be unavailable this requirement is dispensed with.

(c) The attending physician gives adequate documentation entered in the patient's treatment record of the reasons for the procedure, that all other appropriate treatment modalities have been exhausted and that this mode of treatment is definitely indicated and is the least drastic alternative available for the treatment of the patient at the time. Such statement in the treatment record shall be signed by the attending and treatment physician or physicians.

(d) Three physicians, one appointed by the facility and two appointed by the local mental health director, two of whom shall be either board-certified or eligible psychiatrists or board-certified or eligible neurosurgeons, have personally examined the patient and unanimously agree with the attending physicians' determinations pursuant to subdivision (c) and agree that the patient has the capacity to give informed consent. Such agreement shall be documented in the patient's treatment record and signed by each such physician.

Psychosurgery shall in no case be performed for at least 72 hours following the patient's written consent. Under no circumstances shall psychosurgery be performed on a minor.

As used in this section and Sections 5326.4 and 5326.7 “responsible relative” includes the spouse, parent, adult child, or adult brother or sister of the person.

The giving of consent to any of the treatments covered by this chapter may not be construed as a waiver of the right to refuse treatment at a future time. Consent may be withdrawn at any time. Such withdrawal of consent may be either oral or written and shall be given effect immediately.

Refusal of consent to undergo a psychosurgery shall be entered in the patient’s treatment record.

(Added by Stats. 1976, Ch. 1109.)

5326.7. Subject to the provisions of subdivision (f) of Section 5325, convulsive treatment may be administered to an involuntary patient, including anyone under guardianship or conservatorship, only if:

(a) The attending or treatment physician enters adequate documentation in the patient’s treatment record of the reasons for the procedure, that all reasonable treatment modalities have been carefully considered, and that the treatment is definitely indicated and is the least drastic alternative available for this patient at this time. Such statement in the treatment record shall be signed by the attending and treatment physician or physicians.

(b) A review of the patient’s treatment record is conducted by a committee of two physicians, at least one of whom shall have personally examined the patient. One physician shall be appointed by the facility and one shall be appointed by the local mental health director. Both shall be either board-certified or board-eligible psychiatrists or board-certified or board-eligible neurologists. This review committee must unanimously agree with the treatment physician’s determinations pursuant to subdivision (a). Such agreement shall be documented in the patient’s treatment record and signed by both physicians.

(c) A responsible relative of the person’s choosing and the person’s guardian or conservator, if there is one, have been given the oral explanation by the attending physician as required by Section 5326. 2. Should the person desire not to inform a relative or should such chosen relative be unavailable, this requirement is dispensed with.

(d) The patient gives written informed consent as defined in Section 5326.5 to the convulsive treatment. Such consent shall be for a specified maximum number of treatments over a specified maximum period of time not to exceed 30 days, and shall be revocable at any time before or between treatments. Such withdrawal of consent may be either oral or written and shall be given effect immediately. Additional treatments in number or time, not to exceed 30 days, shall require a renewed written informed consent.

(e) The patient’s attorney, or if none, a public defender appointed by the court, agrees as to the patient’s capacity or incapacity to give written informed consent and that the patient who has capacity has given written informed consent.

(f) If either the attending physician or the attorney believes that the patient does not have the capacity to give a written informed consent, then a petition shall be filed in superior court to determine the patient’s capacity to give written informed consent. The court shall hold an evidentiary hearing after giving appropriate notice to the patient, and within three judicial days after the petition is filed. At such hearing the patient shall be present and represented by legal counsel. If the court deems the above-mentioned attorney to have a conflict of interest, such attorney shall not represent the patient in this proceeding.

(g) If the court determines that the patient does not have the capacity to give written informed consent, then treatment may be performed upon gaining the written informed consent as defined in Sections 5326.2 and 5326.5 from the responsible relative or the guardian or the conservator of the patient.

(h) At any time during the course of treatment of a person who has been deemed incompetent, that person shall have the right to claim regained competency. Should he do so, the person’s competency must be reevaluated according to subdivisions (e), (f), and (g).

(Added by Stats. 1976, Ch. 1109.)

5326.75. Convulsive treatment for all other patients including but not limited to those voluntarily admitted to a facility, or receiving the treatment in a physician’s office, clinic or private home, may be administered only if:

(a) The requirements of subdivisions (a), (c), and (d) of Section 5326.7 are met.

(b) A board-certified or board-eligible psychiatrist or a board-certified or board-eligible neurologist other than the patient’s attending or treating physician has examined the patient and verifies that the patient has the capacity to give and has given written informed consent. Such verification shall be documented in the patient’s treatment record and signed by the treating physician.

(c) If there is not the verification required by subdivision (b) of this section or if the patient has not the capacity to give informed consent, then subdivisions (b), (e), (f), (g), and (h) of Section 5326.7 shall also be met.

(Added by Stats. 1976, Ch. 1109.)

5326.8. Under no circumstances shall convulsive treatment be performed on a minor under 12 years of age. Persons 16 and 17 years of age shall personally have and exercise the rights under this article.

Persons 12 years of age and over, and under 16, may be administered convulsive treatment only if all the other provisions of this law are complied with and in addition:

(a) It is an emergency situation and convulsive treatment is deemed a lifesaving treatment.

(b) This fact and the need for and appropriateness of the treatment are unanimously certified to by a review board of three board-eligible or board-certified child psychiatrists appointed by the local mental health director.

(c) It is otherwise performed in full compliance with regulations promulgated by the Director of State Hospitals under Section 5326.95.

(d) It is thoroughly documented and reported immediately to the Director of Health Care Services.

(Amended by Stats. 2012, Ch. 34, Sec. 90. (SB 1009) Effective June 27, 2012.)

5326.85. No convulsive treatment shall be performed if the patient, whether admitted to the facility as a voluntary or involuntary patient, is deemed to be able to give informed consent and refuses to do so. The physician shall indicate in the treatment record that the treatment was refused despite the physician's advice and that he has explained to the patient the patient's responsibility for any untoward consequences of his refusal.

(Added by Stats. 1976, Ch. 1109.)

5326.9. (a) Any alleged or suspected violation of the rights described in Chapter 2 (commencing with Section 5150) shall be investigated by the local director of mental health, or his or her designee. Violations of Sections 5326.2 to 5326.8, inclusive, concerning patients involuntarily detained for evaluation or treatment under this part, or as a voluntary patient for psychiatric evaluation or treatment to a health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, shall also be investigated by the Director of Health Care Services, or his or her designee. Violations of Sections 5326.2 to 5326.8, inclusive, concerning persons committed to a state hospital shall also be investigated by the Director of State Hospitals, or his or her designee. If it is determined by the local director of mental health, the Director of Health Care Services, or the Director of State Hospitals that a right has been violated, a formal notice of violation shall be issued.

(b) Either the local director of mental health or the Director of Health Care Services, upon issuing a notice of violation, may take any or all of the following action:

(1) Assign a specified time period during which the violation shall be corrected.

(2) Referral to the Medical Board of California or other professional licensing agency. Such board shall investigate further, if warranted, and shall subject the individual practitioner to any penalty the board finds necessary and is authorized to impose.

(3) Revoke a facility's designation and authorization under Section 5404 to evaluate and treat persons detained involuntarily.

(4) Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction.

(c) The Director of State Hospitals, upon issuing a notice of violation, may take any or all of the following actions:

(1) Assign a specified time period during which the violation shall be corrected.

(2) Make a referral to the Medical Board of California or other professional licensing agency. The board or agency shall investigate further, if warranted, and shall subject the individual practitioner to any penalty the board finds necessary and is authorized to impose.

(3) Refer any violation of law to a local district attorney or the Attorney General for prosecution in any court with jurisdiction.

(d) Any physician who intentionally violates Sections 5326.2 to 5326.8, inclusive, shall be subject to a civil penalty of not more than five thousand dollars ($5,000) for each violation. The penalty may be assessed and collected in a civil action brought by the Attorney General in a superior court. Such intentional violation shall be grounds for revocation of license.

(e) Any person or facility found to have knowingly violated the provisions of the first paragraph of Section 5325.1 or to have denied without good cause any of the rights specified in Section 5325 shall pay a civil penalty, as determined by the court, of fifty dollars ($50) per day during the time in which the violation is not corrected, commencing on the day on which a notice of violation was issued, not to exceed one thousand dollars ($1,000), for each and every violation, except that any liability under this provision shall be offset by an amount equal to a fine or penalty imposed for the same violation under the provisions of Sections 1423 to 1425, inclusive, or 1428 of the Health and Safety Code. These penalties shall be deposited in the general fund of the county in which the violation occurred. The local district attorney or the Attorney General shall enforce this section in any court with jurisdiction. Where the State Department of Public Health, under the provisions of Sections 1423 to 1425, inclusive, of the Health and Safety Code, determines that no violation has occurred, the provisions of paragraph (4) of subdivision (b) shall not apply.

(f) The remedies provided by this subdivision shall be in addition to and not in substitution for any other remedies which an individual may have under law.

(Amended by Stats. 2013, Ch. 23, Sec. 35. (AB 82) Effective June 27, 2013.)

5326.91. In any facility in which convulsive treatment is performed on a person whether admitted to the facility as an involuntary or voluntary patient, the facility will designate a qualified committee to review all such treatments and to verify the appropriateness and need for such treatment. The local mental health director shall establish a postaudit review committee for convulsive treatments administered anywhere other than in any facility as defined in Section 1250 of the Health and Safety Code in which psychiatric evaluation or treatment is offered. Records of these committees will be subject to availability in the same manner as are the records of other hospital utilization and audit committees and to other regulations. Persons serving on these review committees will enjoy the same immunities as other persons serving on utilization, peer review, and audit committees of health care facilities.

(Amended by Stats. 2012, Ch. 34, Sec. 92. (SB 1009) Effective June 27, 2012.)

5326.95. The Director of State Hospitals shall adopt regulations to carry out the provisions of this chapter, including standards defining excessive use of convulsive treatment, which shall be developed in consultation with the State Department of Health Care Services and the County Behavioral Health Directors Association of California.

(Amended by Stats. 2015, Ch. 455, Sec. 26. (SB 804) Effective January 1, 2016.)

5327. Every person involuntarily detained under provisions of this part or under certification for intensive treatment or postcertification treatment in any public or private mental institution or hospital, including a conservatee placed in any medical, psychiatric or nursing facility, shall be entitled to all rights set forth in this part and shall retain all rights not specifically denied him under this part.

(Added by Stats. 1967, Ch. 1667.)

5328. (a) All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services are confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients before 1969 are also confidential. Information and records shall be disclosed only in any of the following cases:

(1) (A) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or the patient's guardian or conservator, shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(B) Notwithstanding subparagraph (A), if the patient is a dependent or ward of the juvenile court who has been removed from the physical custody of their parents, legal guardian, or Indian custodian, and who is not under a conservatorship, the consent of the patient or their guardian or conservator is not required before information or records may be disclosed to the dependent's or ward's social worker or probation officer for the purposes of ensuring the dependent or ward receives all necessary services or referrals for transition out of a facility to a lower level of care as allowed under 45 C.F.R. Sections 164.502(a)(1)(ii) and 164.512 or any successor regulations. Information obtained pursuant to this paragraph shall not be used in any criminal or juvenile justice proceeding without complying with Section 827. This paragraph does not prohibit evidence identical to that contained within the records from being admissible in a criminal or juvenile justice proceeding, if the evidence is derived solely from means other than this paragraph, as permitted by law. This section does not permit the disclosure of records from a juvenile case file absent compliance with the provisions of Section 827.

(2) If the patient, with the approval of the physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, or licensed professional clinical counselor, who is in charge of the patient, designates persons to whom information or records may be released, except that this article does not compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to the person in confidence by members of a patient's family. This paragraph does not authorize a licensed marriage and family therapist or licensed professional clinical counselor to provide services or to be in charge of a patient's care beyond the therapist's or counselor's lawful scope of practice.

(3) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which the recipient may be entitled.

(4) (A) If the recipient of services is a conservatee or a minor who has been admitted with the consent of their parent or legal guardian, and their conservator, parent, or legal guardian, or a guardian ad litem designates, in writing, persons to whom records or information may be disclosed, except that this article does not compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to the person in confidence by members of a patient's family.

(B) If the recipient of services is a minor dependent or ward of the juvenile court and has been removed from the physical custody of their parents, legal guardian, or Indian custodian, and their attorney or guardian ad litem, in consultation with the dependent or ward, designates in writing persons to whom records or information may be disclosed. This provision shall not be construed to require written designation for the disclosures permitted by subparagraph (B) of paragraph (1) or paragraph (12).

(5) For research, provided that the Director of Health Care Services, the Director of State Hospitals, the Director of Social Services, or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

	Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency, or person), I, ____, agree to obtain the prior informed consent of those persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of that research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(6) To the courts, as necessary to the administration of justice.

(7) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(8) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(9) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(10) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient, except that this article does not compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information that has been given to the person in confidence by members of a patient's family.

(11) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or the professional person's designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after the person's conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this paragraph shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(12) (A) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the provision of child welfare services or the investigation, prevention, identification, management, or treatment of child abuse or neglect pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9. Information obtained pursuant to this paragraph shall not be used in any criminal or juvenile justice proceeding. This paragraph does not prohibit evidence identical to that contained within the records

from being admissible in a criminal or juvenile justice proceeding, if the evidence is derived solely from means other than this paragraph, as permitted by law.

(B) As used in this paragraph, “child welfare services” means those services that are directed at preventing child abuse or neglect.

(13) To county patients’ rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(14) To a committee established in compliance with Section 14725.

(15) In providing information as described in Section 7325.5. This paragraph does not permit the release of any information other than that described in Section 7325.5.

(16) To the county behavioral health director or the director’s designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(17) If the patient gives consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this paragraph, “qualified professional persons” means those persons with the qualifications necessary to carry out the genetic counseling duties under this paragraph as determined by the genetic disease unit established in the State Department of Health Care Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this paragraph after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(18) If the patient, in the opinion of the patient’s psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies and county child welfare agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this paragraph, “psychotherapist” has the same meaning as provided in Section 1010 of the Evidence Code.

(19) (A) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(B) For purposes of this paragraph, “designated officer” and “emergency response employee” have the same meaning as these terms are used in the federal Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

(C) The designated officer shall be subject to the confidentiality requirements specified in Section 120980 of the Health and Safety Code, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980 of the Health and Safety Code, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(20) (A) To a law enforcement officer who personally lodges with a facility, as defined in subparagraph (B), a warrant of arrest or an abstract of a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This subparagraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(B) For purposes of subparagraph (A), a facility means all of the following:

(i) A state hospital, as defined in Section 4001.

(ii) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a person with mental illness subject to this section.

(iii) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(iv) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(v) A mental health rehabilitation center, as described in Section 5675.

(vi) A skilled nursing facility with a special treatment program for individuals with mental illness, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(vii) A psychiatric residential treatment facility, as defined in Section 1250.10 of the Health and Safety Code.

(21) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(22) (A) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, all of the following information and records may be released:

(i) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(ii) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(iii) The information described in clauses (i) and (ii) may be released only if both of the following conditions are met:

(I) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection, has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(II) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(ia) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(ib) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this paragraph, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(ic) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(B) For purposes of this paragraph, the State Personnel Board may, before any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this paragraph, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(C) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(D) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal

and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(E) For purposes of this paragraph, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

(23) To the person appointed as the developmental services decisionmaker for a minor, dependent, or ward pursuant to Section 319, 361, or 726.

(24) During the provision of emergency services and care, as defined in Section 1317.1 of the Health and Safety Code, the communication of patient information between a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, emergency medical personnel at the scene of an emergency or in an emergency medical transport vehicle, or other professional person or emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(25) To a business associate or for health care operations purposes, in accordance with Part 160 (commencing with Section 160.101) and Part 164 (commencing with Section 164.102) of Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations.

(26) To authorized personnel who are employed by the California Victim Compensation Board for the purposes of verifying the identity and eligibility of individuals claiming compensation pursuant to the Forced or Involuntary Sterilization Compensation Program described in Chapter 1.6 (commencing with Section 24210) of Division 20 of the Health and Safety Code. The California Victim Compensation Board shall maintain the confidentiality of any information or records received from the department in accordance with Part 160 (commencing with Section 160.101) and Part 164 (commencing with Section 164.102) of Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations and this section. Public disclosure of aggregated claimant information or the annual report required under subdivision (b) of Section 24211 of the Health and Safety Code is not a violation of this section.

(27) To parties to a judicial or administrative proceeding as permitted by law, and who satisfy the requirements under Part 164 (commencing with Section 164.512(e)) of Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations, except that this paragraph shall not be construed to affect any rights or privileges provided under law of any party or nonparty.

(28) To the State Department of Health Care Services for the purposes of Section 4081.

(b) Notwithstanding subdivision (a), patient information and records shall, as necessary, be provided to and discussed with district attorneys for purposes of commitment, recommitment, or petitions for release proceedings for patients committed under Sections 1026, 1370, 1600, 2962, and 2972 of the Penal Code and Section 6600 of this code, unless otherwise prohibited by law.

(c) The amendment of paragraph (4) of subdivision (a) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(d) This section is not limited by Section 5150.05 or 5332.

(Amended by Stats. 2023, Ch. 191, Sec. 9. (SB 137) Effective September 13, 2023.)

5328.01. Notwithstanding Section 5328, all information and records made confidential under the first paragraph of Section 5328 shall also be disclosed to governmental law enforcement agencies investigating evidence of a crime where the records relate to a patient who is confined or has been confined as a mentally disordered sex offender or pursuant to Section 1026 or 1368 of the Penal Code and the records are in the possession or under the control of any state hospital serving the mentally disabled, as follows:

(a) In accordance with the written consent of the patient; or

(b) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located compelling a party to produce in court specified records and specifically describing the records being sought, when the order is granted after an application showing probable cause therefor. In assessing probable cause, the court shall do all of the following:

(1) Weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(2) Determine that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution.

(3) Determine that the crime involves the causing of, or direct threatening of, the loss of life or serious bodily injury.

(4) In granting or denying a subpoena, the court shall state on the record the reasons for its decision and the facts which the court considered in making such a ruling.

(5) If a court grants an order permitting disclosure of such records, the court shall issue all orders necessary to protect, to the maximum extent possible, the patient's privacy and the privacy and confidentiality of the physician-patient relationship.

(6) Any records disclosed pursuant to the provisions of this subdivision and any copies thereof shall be returned to the facility at the completion of the investigation or prosecution unless they have been made a part of the court record.

(c) A governmental law enforcement agency applying for disclosure of patient records under this subdivision may petition the court for an order, upon a showing of probable cause to believe that delay would seriously impede the investigation, which requires the ordered party to produce the records forthwith.

(d) Records obtained by a governmental law enforcement agency pursuant to this section shall not be disseminated to any other agency or person unless such dissemination relates to the criminal investigation for which the records were obtained by the governmental law enforcement agency. The willful dissemination of any record in violation of this paragraph shall constitute a misdemeanor.

(e) If any records obtained pursuant to this section are of a patient presently receiving treatment at the state hospital serving the mentally disabled, the law enforcement agency shall only receive copies of the original records.

(Added by Stats. 1985, Ch. 1036, Sec. 1.)

5328.02. Notwithstanding Section 5328, all information and records made confidential under the first paragraph of Section 5328 shall also be disclosed to the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(Added by Stats. 1980, Ch. 1117, Sec. 26.)

5328.03. (a) (1) Notwithstanding Section 5328 of this code, Section 3025 of the Family Code, or paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 shall not release mental health records of the minor patient and shall not disclose mental health information about that minor patient based upon an authorization to release those records or the information signed by the minor's parent or guardian. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the records or information after finding that such an order would not be detrimental to the minor patient.

(2) Notwithstanding Section 5328 of this code or Section 3025 of the Family Code, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) (1) When the juvenile court has issued an order described in paragraph (1) of subdivision (a), the parent or guardian seeking the release of the minor's mental health records or information about the minor shall present a copy of the court order to the psychotherapist before any records or information may be released pursuant to the signed authorization.

(2) When the juvenile court has issued an order described in paragraph (2) of subdivision (a), the parent or guardian seeking to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist and shall comply with subdivisions (a) and (b) of Section 123110 of the Health and Safety Code before the parent or guardian is allowed to inspect or obtain copies of the mental health records of the minor patient.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient, or to inspect or obtain copies of

the minor patient's health records. Liability for a psychotherapist's decision not to release records, not to disclose information about the minor patient, or not to allow the parent or guardian to inspect or obtain copies of the mental health records pursuant to the authority of subdivision (a) of Section 123115 of the Health and Safety Code shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 when a parent or guardian presents the minor's psychotherapist with an order authorizing the parent or guardian to sign an authorization for the release of information or the mental health records regarding the minor patient or authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient.

(Amended by Stats. 2013, Ch. 76, Sec. 209. (AB 383) Effective January 1, 2014.)

5328.04. (a) Notwithstanding Section 5328, information and records made confidential under that section may be disclosed to a county social worker, a probation officer, a foster care public health nurse acting pursuant to Section 16501.3, or any other person who is legally authorized to have custody or care of a minor, for the purpose of coordinating health care services and medical treatment, as defined in subdivision (b) of Section 56.103 of the Civil Code, mental health services, or services for developmental disabilities, for the minor.

(b) Information disclosed under subdivision (a) shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating health care services and medical treatment, or mental health or developmental disability services, for the minor and only to a person who would otherwise be able to obtain the information under subdivision (a) or any other law.

(c) Information disclosed pursuant to this section shall not be admitted into evidence in any criminal or delinquency proceeding against the minor. Nothing in this subdivision shall prohibit identical evidence from being admissible in a criminal proceeding if that evidence is derived solely from lawful means other than this section and is permitted by law.

(d) Nothing in this section shall be construed to compel a physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, licensed professional clinical counselor, nurse, attorney, or other professional person to reveal information, including notes, that has been given to him or her in confidence by the minor or members of the minor's family.

(e) The disclosure of information pursuant to this section is not intended to limit disclosure of information when that disclosure is otherwise required by law.

(f) Nothing in this section shall be construed to expand the authority of a social worker, probation officer, foster care public health nurse, or custodial caregiver beyond the authority provided under existing law to a parent or a patient representative regarding access to confidential information.

(g) As used in this section, "minor" means a minor taken into temporary custody or for whom a petition has been filed with the court, or who has been adjudged a dependent child or ward of juvenile court pursuant to Section 300 or 601.

(h) Information and records that may be disclosed pursuant to this section do not include psychotherapy notes, as defined in Section 164.501 of Title 45 of the Code of Federal Regulations.

(Amended by Stats. 2015, Ch. 535, Sec. 2. (SB 319) Effective January 1, 2016.)

5328.05. (a) Notwithstanding Section 5328, information and records may be disclosed when an older adult client, in the opinion of a designee of a human service agency serving older adults through an established multidisciplinary team, presents signs or symptoms of elder abuse or neglect, whether inflicted by another or self-inflicted, the agency designee to the multidisciplinary team may, with the older adult's consent, obtain information from other county agencies regarding, and limited to, whether or not a client is receiving services from any other county agency.

(b) The information obtained pursuant to subdivision (a) shall not include information regarding the nature of the treatment or services provided, and shall be shared among multidisciplinary team members for multidisciplinary team activities pursuant to this section.

(c) The county agencies which may cooperate and share information under this section shall have staff designated as members of an established multidisciplinary team, and include, but not be limited to, the county departments of public social services, health, mental health, and alcohol and drug abuse, the public guardian, and the area agencies on aging.

(d) The county patient's rights advocate shall report any negative consequences of the implementation of this exception to confidentiality requirements to the local mental health director.

(Added by Stats. 1990, Ch. 654, Sec. 1.)

5328.06. (a) Notwithstanding Section 5328, information and records shall be disclosed to the protection and advocacy agency established in this state to fulfill the requirements and assurances of the federal Protection and Advocacy for the Mentally Ill

Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code, for the protection and advocacy of the rights of people with mental disabilities, including people with mental illness, as defined in Section 10802(4) of Title 42 of the United States Code.

(b) Access to information and records to which subdivision (a) applies shall be in accord with Division 4.7 (commencing with Section 4900).

(Amended by Stats. 2003, Ch. 878, Sec. 10. Effective January 1, 2004.)

5328.1. (a) Upon request of a member of the family of a patient, or other person designated by the patient, a public or private treatment facility shall give the family member or the designee notification of the patient's diagnosis, the prognosis, the medications prescribed, the side effects of medications prescribed, if any, and the progress of the patient, if, after notification of the patient that this information is requested, the patient authorizes its disclosure. If, when initially informed of the request for notification, the patient is unable to authorize the release of such information, notation of the attempt shall be made into the patient's treatment record, and daily efforts shall be made to secure the patient's consent or refusal of authorization. However, if a request for information is made by the spouse, parent, child, or sibling of the patient and the patient is unable to authorize the release of such information, the requester shall be given notification of the patient's presence in the facility, except to the extent prohibited by federal law.

(b) Upon the admission of any mental health patient to a 24-hour public or private health facility licensed pursuant to Section 1250 of the Health and Safety Code, the facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's admission, unless the patient requests that this information not be provided. The facility shall make reasonable attempts to notify the patient's next of kin or any other person designated by the patient, of the patient's release, transfer, serious illness, injury, or death only upon request of the family member, unless the patient requests that this information not be provided. The patient shall be advised by the facility that he or she has the right to request that this information not be provided.

(c) No public or private entity or public or private employee shall be liable for damages caused or alleged to be caused by the release of information or the omission to release information pursuant to this section.

Nothing in this section shall be construed to require photocopying of a patient's medical records in order to satisfy its provisions.

(Amended by Stats. 1983, Ch. 1174, Sec. 2.)

5328.15. All information and records obtained in the course of providing services under Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records may be disclosed, however, notwithstanding any other law, as follows:

(a) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Public Health, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities and to ensure that the standards of care and services provided in such facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) of, and Chapter 3 (commencing with Section 1500) of, Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Public Health or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Public Health or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Public Health or the State Department of Social Services shall not contain the name of the patient.

(b) To any board which licenses and certifies professionals in the fields of mental health pursuant to state law, when the Director of State Hospitals has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of that board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the patient.

(c) To a protection and advocacy agency established pursuant to Section 4901, to the extent that the information is incorporated within any of the following:

(1) An unredacted facility evaluation report form or an unredacted complaint investigation report form of the State Department of Social Services. The information shall remain confidential and subject to the confidentiality requirements of subdivision (f) of Section 4903.

(2) An unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency of the State Department of Public Health, prepared by authorized licensing personnel or authorized representatives as described in subdivision (a). The information shall remain confidential and subject to the confidentiality requirements of subdivision (f) of Section 4903.

(Amended by Stats. 2015, Ch. 303, Sec. 582. (AB 731) Effective January 1, 2016.)

5328.2. Notwithstanding Section 5328, movement and identification information and records regarding a patient who is committed to the department, state hospital, or any other public or private mental health facility approved by the county behavioral health director for observation or for an indeterminate period as a mentally disordered sex offender, or for a person who is civilly committed as a sexually violent predator pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6, or regarding a patient who is committed to the department, to a state hospital, or any other public or private mental health facility approved by the county behavioral health director under Section 1026 or 1370 of the Penal Code or receiving treatment pursuant to Section 5300 of this code, shall be forwarded immediately without prior request to the Department of Justice. Except as otherwise provided by law, information automatically reported under this section shall be restricted to name, address, fingerprints, date of admission, date of discharge, date of escape or return from escape, date of any home leave, parole or leave of absence and, if known, the county in which the person will reside upon release. The Department of Justice may in turn furnish information reported under this section pursuant to Section 11105 or 11105.1 of the Penal Code. It shall be a misdemeanor for recipients furnished with this information to in turn furnish the information to any person or agency other than those specified in Section 11105 or 11105.1 of the Penal Code.

(Amended by Stats. 2015, Ch. 455, Sec. 28. (SB 804) Effective January 1, 2016.)

5328.3. (a) When a voluntary patient would otherwise be subject to the provisions of Section 5150 of this part and disclosure is necessary for the protection of the patient or others due to the patient's disappearance from, without prior notice to, a designated facility and his or her whereabouts is unknown, notice of the disappearance may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility or his or her designee.

(b) (1) When an involuntary patient is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, and the patient has disappeared from a designated facility, or is transferred between state hospitals, notice of the disappearance or transfer shall be made to the court initially ordering the patient's commitment pursuant to Section 1370 of the Penal Code, the district attorney for the county that ordered the commitment, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility or his or her designee. This notice shall be made within 24 hours of the patient's disappearance or transfer from the facility.

(2) A designated facility shall not permit the release of an involuntary patient who is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008, without prior written authorization of the court pursuant to paragraph (2) of subdivision (d) of Section 5358. The court may approve the pending release without a hearing unless a party notified pursuant to subdivision (d) of Section 5358 objects to the pending release within 10 days after receiving notice. This paragraph does not apply to the transfer of persons between state hospitals.

(Amended by Stats. 1995, Ch. 593, Sec. 2. Effective January 1, 1996.)

5328.4. The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient while hospitalized has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, carjacking, robbery, assault with intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, unlawful possession of a weapon as provided in any provision listed in Section 16590 of the Penal Code, or escape from a hospital by a mentally disordered sex offender as provided in Section 6330 of the Welfare and Institutions Code, shall release information about the patient to governmental law enforcement agencies.

The physician in charge of the patient, or the professional person in charge of the facility or his or her designee, when he or she has probable cause to believe that a patient, while hospitalized has committed, or has been the victim of assault or battery may release information about the patient to governmental law enforcement agencies.

This section shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her voluntary or involuntary admission, commitment, or treatment.

This section shall not be construed as an exception to or in any other way affecting the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

(Amended by Stats. 2010, Ch. 178, Sec. 101. (SB 1115) Effective January 1, 2011. Operative January 1, 2012, by Sec. 107 of Ch. 178.)

5328.5. Information and records described in Section 5328 may be disclosed in communications relating to the prevention, investigation, or treatment of elder abuse or dependent adult abuse pursuant to Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(Added by Stats. 1987, Ch. 1166, Sec. 1. Effective September 26, 1987.)

5328.6. When any disclosure of information or records is made as authorized by the provisions of Section 11878 or 11879 of the Health and Safety Code, subdivision (a) or (d) of Section 5328, Sections 5328.1, 5328.3, or 5328.4, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record: the date and circumstances under which such disclosure was made; the names and relationships to the patient if any, of persons or agencies to whom such disclosure was made; and the specific information disclosed.

(Amended by Stats. 1980, Ch. 676, Sec. 333.)

5328.7. Signed consent forms by a patient for release of any information to which such patient is required to consent under the provisions of Sections 11878 or 11879 of the Health and Safety Code or subdivision (a) or (d) of Section 5328 shall be obtained for each separate use with the use specified, the information to be released, the name of the agency or individual to whom information will be released indicated on the form and the name of the responsible individual who has authorization to release information specified. Any use of this form shall be noted in the patient file. Patients who sign consent forms shall be given a copy of the consent form signed.

(Amended by Stats. 1980, Ch. 676, Sec. 334.)

5328.8. (a) The State Department of State Hospitals, the physician in charge of the patient, or the professional person in charge of the facility or his or her designee, shall release the patient's medical record to a medical examiner, forensic pathologist, or coroner, upon request, when a patient dies from any cause, natural or otherwise, while hospitalized in a state mental hospital. Except for the purposes included in paragraph (8) of subdivision (b) of Section 56.10 of the Civil Code, a medical examiner, forensic pathologist, or coroner shall not disclose any information contained in the medical record obtained pursuant to this subdivision without a court order or authorization pursuant to paragraph (4) of subdivision (c) of Section 56.11 of the Civil Code.

(b) A health facility, as defined in Section 1250 of the Health and Safety Code, a health or behavioral health facility or clinic, and the physician in charge of the patient shall release the patient's medical record to a medical examiner, forensic pathologist, or coroner, upon request, when a patient dies from any cause, natural or otherwise. Except for the purposes included in paragraph (8) of subdivision (b) of Section 56.10 of the Civil Code, a medical examiner, forensic pathologist, or coroner shall not disclose any information contained in the medical record obtained pursuant to this subdivision without a court order or authorization pursuant to paragraph (4) of subdivision (c) of Section 56.11 of the Civil Code.

(c) For purposes of this section, a reference to a "medical examiner, forensic pathologist, or coroner" means a coroner or deputy coroner, as described in subdivision (c) of Section 830.35 of the Penal Code, or a licensed physician who currently performs official autopsies on behalf of a county coroner's office or a medical examiner's office, whether as a government employee or under contract to that office.

(Amended by Stats. 2016, Ch. 690, Sec. 3. (AB 2119) Effective January 1, 2017.)

5328.9. If at such time as a patient's hospital records are required by an employer to whom the patient has applied for employment, such records shall be forwarded to a qualified physician or psychiatrist representing the employer upon the request of the patient unless the physician or administrative officer responsible for the patient deems the release of such records contrary to the best interest of the patient.

If the physician or administrative officer responsible for a patient deems the release of such records contrary to the best interest of the patient, he shall notify the patient within five days. In the event that the disclosure of the patient's records to the patient himself would not serve his best interests, the physician or administrative officer in question shall render formal notice of his decision to the superior court of the county in which the patient resides.

(Added by Stats. 1972, Ch. 1058.)

5329. Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards set by the Director of State Hospitals.

(Amended by Stats. 2012, Ch. 440, Sec. 64. (AB 1488) Effective September 22, 2012.)

5330. (a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5

of the Health and Safety Code, for the greater of the following amounts:

(1) Ten thousand dollars ($10,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for both of the following:

(1) One thousand dollars ($1,000). In order to recover under this paragraph, it shall not be a prerequisite that the plaintiff suffer or be threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the plaintiff.

(c) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(d) In addition to the amounts specified in subdivisions (a) and (b), the plaintiff shall recover court costs and reasonable attorney's fees as determined by the court.

(Amended by Stats. 1998, Ch. 738, Sec. 1. Effective September 22, 1998.)

5331. No person may be presumed to be incompetent because he or she has been evaluated or treated for mental disorder or chronic alcoholism, regardless of whether such evaluation or treatment was voluntarily or involuntarily received. Any person who leaves a public or private mental health facility following evaluation or treatment for mental disorder or chronic alcoholism, regardless of whether that evaluation or treatment was voluntarily or involuntarily received, shall be given a statement of California law as stated in this paragraph.

Any person who has been, or is, discharged from a state hospital and received voluntary or involuntary treatment under former provisions of this code relating to inebriates or the mentally ill shall, upon request to the state hospital executive director or the State Department of State Hospitals, be given a statement of California law as stated in this section unless the person is found to be incompetent under proceedings for conservatorship or guardianship.

(Amended by Stats. 2012, Ch. 24, Sec. 128. (AB 1470) Effective June 27, 2012.)

5332. (a) Antipsychotic medication, as defined in subdivision (l) of Section 5008, may be administered to any person subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70, if that person does not refuse that medication following disclosure of the right to refuse medication as well as information required to be given to persons pursuant to subdivision (e) of Section 5152 and subdivision (b) of Section 5213.

(b) If any person subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70, and for whom antipsychotic medication has been prescribed, orally refuses or gives other indication of refusal of treatment with that medication, the medication shall be administered only when treatment staff have considered and determined that treatment alternatives to involuntary medication are unlikely to meet the needs of the patient, and upon a determination of that person's incapacity to refuse the treatment, in a hearing held for that purpose.

(c) Each hospital in conjunction with the hospital medical staff or any other treatment facility in conjunction with its clinical staff shall develop internal procedures for facilitating the filing of petitions for capacity hearings and other activities required pursuant to this chapter.

(d) When a person is subject to detention pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70, the agency or facility providing the treatment shall acquire the person's medication history, if possible.

(e) In the case of an emergency, as defined in subdivision (m) of Section 5008, a person detained pursuant to Section 5150, 5250, 5260, 5270.15, or 5270.70 may be treated with antipsychotic medication over the person's objection prior to a capacity hearing, but only with antipsychotic medication that is required to treat the emergency condition, which shall be provided in the manner least restrictive to the personal liberty of the patient. It is not necessary for harm to take place or become unavoidable prior to intervention.

(Amended by Stats. 2024, Ch. 643, Sec. 2. (SB 1184) Effective January 1, 2025.)

5333. (a) Persons subject to capacity hearings pursuant to Section 5332 shall have a right to representation by an advocate or legal counsel. "Advocate," as used in this section, means a person who is providing mandated patients' rights advocacy services pursuant to Chapter 6.2 (commencing with Section 5500), and this chapter. If the State Department of State Hospitals provides training to patients' rights advocates, that training shall include issues specific to capacity hearings.

(b) Petitions for capacity hearings pursuant to Section 5332 shall be filed with the superior court. The director of the treatment facility or his or her designee shall personally deliver a copy of the notice of the filing of the petition for a capacity hearing to the person who is the subject of the petition.

(c) The mental health professional delivering the copy of the notice of the filing of the petition to the court for a capacity hearing shall, at the time of delivery, inform the person of his or her legal right to a capacity hearing, including the right to the assistance of the patients' rights advocate or an attorney to prepare for the hearing and to answer any questions or concerns.

(d) As soon after the filing of the petition for a capacity hearing is practicable, an attorney or a patients' rights advocate shall meet with the person to discuss the capacity hearing process and to assist the person in preparing for the capacity hearing and to answer questions or to otherwise assist the person, as is appropriate.

(Amended by Stats. 2012, Ch. 24, Sec. 129. (AB 1470) Effective June 27, 2012.)

5334. (a) (1) Capacity hearings required by Section 5332 shall be heard within 24 hours of the filing of the petition whenever possible. However, if any party needs additional time to prepare for the hearing, the hearing shall be postponed for 24 hours. In case of hardship, hearings may also be postponed for an additional 24 hours, pursuant to local policy developed by the county mental health director and the presiding judge of the superior court regarding the scheduling of hearings. The policy developed pursuant to this subdivision shall specify procedures for the prompt filing and processing of petitions to ensure that the deadlines set forth in this section are met, and shall take into consideration the availability of advocates and the treatment needs of the patient. In no event shall hearings be held beyond 72 hours of the filing of the petition. The person who is the subject of the petition and the person's advocate or counsel shall receive a copy of the petition at the time it is filed.

(2) (A) Under exigent circumstances, upon the filing of a petition for a hearing to determine a person's capacity to refuse treatment with antipsychotic medication and an attestation of exigent circumstances being documented in a person's medical record pursuant to subdivision (b) of Section 5336, a hearing shall be held to determine the person's capacity to refuse treatment with antipsychotic medication on an expedited basis and as soon as reasonably practicable.

(B) This paragraph shall be inoperative on January 1, 2030.

(b) (1) Capacity hearings shall be held in an appropriate location at the facility where the person is receiving treatment, and shall be held in a manner compatible with, and the least disruptive of, the treatment being provided to the person.

(2) Subject to any applicable rules of court, a capacity hearing may be conducted by remote means in an appropriate location at the facility where the person is receiving treatment as authorized pursuant to Section 367.76 of the Code of Civil Procedure, so long as the hearing would be compatible with, and be the least disruptive of, the treatment being provided to the person, as required by paragraph (1).

(c) Capacity hearings shall be conducted by a superior court judge, a court-appointed commissioner or referee, or a court-appointed hearing officer. All commissioners, referees, and hearing officers shall be appointed by the superior court from a list of attorneys unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the department as a facility for 72-hour treatment and evaluation may serve as a hearing officer. All hearing officers shall receive training in the issues specific to capacity hearings.

(d) The person who is the subject of the capacity hearing shall be given oral notification of the determination at the conclusion of the capacity hearing. As soon thereafter as is practicable, the person, the person's counsel or advocate, and the director of the facility where the person is receiving treatment shall be provided with written notification of the capacity determination, which shall include a statement of the evidence relied upon and the reasons for the determination. A copy of the determination shall be submitted to the superior court.

(e) (1) The person who is the subject of the capacity hearing may appeal the determination to the superior court or the court of appeal.

(2) The person who filed the original petition for a capacity hearing may request the district attorney or county counsel in the county where the person is receiving treatment to appeal the determination to the superior court or the court of appeal, on behalf of the state.

(3) Nothing shall prohibit treatment from being initiated pending appeal of a determination of incapacity pursuant to this section.

(4) Nothing in this section shall be construed to preclude the right of a person to bring a writ of habeas corpus pursuant to Section 5275, subject to the provisions of this chapter.

(f) All appeals to the superior court pursuant to this section shall be subject to de novo review.

(Amended by Stats. 2024, Ch. 643, Sec. 3. (SB 1184) Effective January 1, 2025.)

5336. (a) (1) A determination that a person does not have the capacity to refuse treatment with antipsychotic medication made pursuant to Section 5334 during the detention period described in Section 5150 or 5250 shall remain in effect for the duration of the detention period described in Section 5150, and for the duration of the detention period described in Section 5250, or for the duration of both periods together.

(2) Unless otherwise specified, and except as applied to Sections 5150 and 5250, a treating physician may request a hearing for a new determination of a person's capacity to refuse treatment with antipsychotic medication, to be made pursuant to Section 5334, at any time in the 48 hours prior to the end of the duration of the current detention period when it reasonably appears to the treating physician that it is necessary for the person to be detained for a subsequent detention period and the person's capacity has not been restored according to standards developed pursuant to subdivision (c) of Section 5332.

(3) A determination that a person does not have the capacity to refuse treatment with antipsychotic medication pursuant to this section remains in effect until one of the following occurs, whichever occurs first in time:

(A) In the judgment of the person's treating physician, the person's capacity has been restored or the person no longer meets the criteria for involuntary detention, according to standards developed pursuant to subdivision (c) of Section 5332.

(B) The court or hearing officer determines that the person's capacity to refuse treatment with antipsychotic medication is restored.

(C) The time limit for the detention period described in Section 5150, Section 5250, or for the detention period of both periods together, expires.

(b) (1) Under exigent circumstances, an order for treatment with antipsychotic medication made pursuant to Section 5332 shall remain in effect at the beginning of a detention period described in Section 5260, 5270.15, or 5270.70, provided that a petition for a new determination on the question of capacity has been filed pursuant to Section 5334, and shall remain in effect until a hearing on that petition for that detention period is held under the exigent circumstances described by this subdivision and a decision is issued as set forth in Section 5334.

(2) Upon receipt of a petition for a hearing to determine a person's capacity to refuse treatment with antipsychotic medication and attestation of exigent circumstances being documented in the person's medical record pursuant to this subdivision, a hearing shall be held on an expedited basis to determine the person's capacity to refuse treatment with antipsychotic medication as soon as reasonably practicable and within 24 hours.

(3) In any case where an attestation of exigent circumstances is documented in the person's medical record pursuant to this subdivision and an order for treatment with antipsychotic medication made pursuant to Section 5332 remains in effect, the facility where the person is receiving treatment shall report all of the following to the county behavioral health director in the county in which they operate, in a form and manner and in accordance with timelines prescribed by the county behavioral health director:

(A) The date and time when the physician or facility originally filed a petition with the superior court to request a hearing to determine a person's capacity to refuse treatment with antipsychotic medication under this section.

(B) The date when the applicable detention period described in paragraph (1) was scheduled to expire prior to the attestation described in subparagraph (C) of paragraph (6) being documented in the person's medical record.

(C) The date and time when the attestation of exigent circumstances was documented in the person's medical record, as described in subparagraph (C) of paragraph (6).

(D) The reason for the delay of the originally requested capacity hearing, if known, including, but not limited to, the lack of timely scheduling of the hearing, the unavailability of a hearing officer, the unavailability of an attorney or patients' rights advocate to represent the person subject to the petition, court closure, the unavailability of remote hearing technology, the unavailability of the person subject to the petition, or the unavailability of facility staff to present the reasons for the petition.

(E) The date and time when the capacity hearing was held on an expedited basis.

(4) (A) County behavioral health directors shall provide the information specified in paragraph (3) to the State Department of Health Care Services.

(B) Each May 1, beginning May 1, 2026, the State Department of Health Care Services shall compile the information it receives from county behavioral health directors pursuant to this paragraph during the prior calendar year, as well as information about the county where the facility that submitted the information is located, and report the information pursuant to the requirements of Section 5402.

(5) This subdivision does not apply to a person whose capacity has been restored according to standards developed pursuant to subdivision (c) of Section 5332 or affect the requirement that a hearing be conducted to determine a person's capacity to refuse treatment with antipsychotic medication within the applicable time limits specified in subdivision (a) of Section 5334, other than to require that such a hearing is held on an expedited basis.

(6) In order for there to be exigent circumstances necessitating an expedited hearing pursuant to this subdivision, all of the following must be true:

(A) A petition for a new determination on the question of capacity pursuant to Section 5334 has been filed prior to the expiration of the current order and in a period of time that provides a reasonable opportunity for a hearing to be held prior to the expiration of the current order and at least eight hours prior to the order's expiration.

(B) There has been a delay in a hearing to determine a person's capacity to refuse treatment with antipsychotic medication made pursuant to Section 5334, creating a risk that the existing capacity determination may expire before a new capacity determination is made.

(C) The person's treating physician documents in a written attestation of exigent circumstances, which shall be maintained in the person's medical record, that one of the following would likely occur if there were a lapse in the person's treatment with antipsychotic medication:

(i) An emergency, as defined in subdivision (m) of Section 5008.

(ii) A serious deterioration or decompensation of the person's mental health condition that could result in significant harm to the person based upon the facts of the person's individual circumstances, which the treating physician documents in their written attestation of exigent circumstances.

(D) The extension of treatment with antipsychotic medication until a new capacity hearing is held on the basis of an attestation of exigent circumstances described in this subdivision shall be invoked for a person only one time during the applicable detention period covered by the existing capacity determination.

(7) This subdivision shall be inoperative on January 1, 2030.

(Amended by Stats. 2024, Ch. 643, Sec. 4. (SB 1184) Effective January 1, 2025.)

5337. Notwithstanding Section 5257, nothing shall prohibit the filing of a petition for post certification pursuant to Article 6 (commencing with Section 5300) for persons who have been determined to be a danger to others at a certification review hearing.

(Added by Stats. 1991, Ch. 681, Sec. 7.)